IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

Crl.Rev.Pet.No. 3172 of 2006()

CRA.712/2001 of ADDL.DISTRICT AND SESSIONS JUDGE (FAST TRACK (ADHOC II, KOZHIKODE.
CC.253/1997 of JUDL. MAGISTRATE OF FIRST CLASS-II, PERAMBRA

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REVN. PETITIONER(S): APPELLANTS/ACCUSED 1 & 2

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1. MOIDI, S/O.PAKRAN,
KOONERI MEETHAL, MENHANIUM AMSOM DESOM,
KOYILANDY TALUK.

2. THIKKANDI IBRAYI, S/O.AMMAD HAJI,
NECHAD AMSOM, DESOM, KOYILANDY TALUK.

BY ADV. SRI.V.K.PEERMOHAMED KHAN

RESPONDENT(S): STATE

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

PUBLIC PROSECUTOR SRI.SURESHKUMAR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06.03.2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl R.P. No.3172 of 2006

Dated 6th day of March, 2007.

O R D E R

The revision petitioners are accused Nos.1 and 2 and they were convicted by the Magistrate Court under Sections 143, 147, 148, 332 and 149 of Indian Penal Code to undergo simple imprisonment for one month for offence under Section 143 Indian Penal Code, to undergo simple imprisonment for three months under section 148 of IPC and to undergo simple imprisonment for 6 months under Section 332 IPC. No separate sentence was awarded for offence under Section 147 IPC. Sentences were ordered to run concurrently. In appeal the conviction and sentence are challenged in this revision.

2. According to prosecution, on 28.11.91 at 12.45 p.m., seven accused along with 50 others armed with sticks and stones, tried to attack the demonstration conducted by parallel college students, following them while they were moving in a procession (only accused nos.1 to 3 are seen tried). When the police party attempted to prevent the accused in order to save the students, the accused with intention to prevent the police from discharging their duty, attacked the police. Hence, they

allegedly committed offence under Sections 143, 147, 148, 332 read with Section 149 IPC.

3. To prove the prosecution case, PW1 to PW5 were examined and Exts.P1 to P4 were marked. Both the courts below placed reliance on the evidence given by PW1 to PW3 and held that the incident, as alleged took place. At the time of hearing, revision petitioners and their counsel were absent. There was no representation also on their behalf. Before the courts below, revision petitioners raised a contention that there is no identification of accused and hence a conviction is bad on that ground itself. There is no evidence to prove an unlawful assembly and participation of the revision petitioners in the said incident, it is also contended.

4. On going through the evidence of PW1 to PW3, it can be seen that their evidence is highly contradictory and it cannot be believed. There is also no independent or supporting evidence on the prosecution side. There is no proof regarding formation of an unlawful assembly and also regarding participation of revision petitioners in the incident. It is also

clear that neither the prosecution nor the trial court caused the accused to be identified when the relevant witnesses were examined in court. It cannot be treated as a mere omission. It appears from the records that witnesses were not able to identify the accused at the time of offence.

5. In the evidence, PW2, an eye witness stated that he can identify the accused who assaulted PW1 to PW3. He referred to two of the accused by their names in the chief examination, but he stated in the cross examination that he cannot identify who the second accused was. Though he claimed that those accused were present in court and he knew them he could not identify. PW1 and PW3 also spoke in the same line and their evidence also does not inspire the confidence of the court to confirm whether petitioners were the persons who took part in the incident.

6. PW3, the Sub Inspector would claim that he also knew the accused by their names even prior to the occurrence. When he was examined in court, he also stated the names of few accused. But, he did not point out and identify them while

giving evidence. He disclosed to the doctor, PW4 the allegations and history relating to the injury, but names of none of the accused were stated by him to the doctor as seen from the evidence of PW4 and would certificate, Ext.P3. PW1 also did not state the names of the accused to PW4, the doctor. Ext.P2 is the wound certificate issued to PW1 and the names are not seen stated therein. The allegation made to the doctor was that the injuries were sustained by PW1 and PW3 by pelting stones.

7. Now, coming to the specific overt acts committed by accused 1 and 2, I find that as per the charge framed by the court, accused 1 and 2 had beaten PW1 and PW3, but to the doctor, PW4, what was stated by them was that they sustained injury by pelting stones. PW4, the doctor deposed that the injured themselves gave the allegation and history relating to the injury and those were recorded in Exts.P2 and P3.

8. A suggestion was made to PW2 that he sustained injury by pelting stones, but he could not deny the same. The charge sheet mentions that second accused hit on the face of

PW1 with a stone, but none of the witnesses has a case that PW1 was hit with a stone. On the other hand, to the doctor, PW4, the allegations made by the injured was that he sustained injury by pelting of stones. In the light of all these discrepancies, the accused ought not to have been convicted, especially since the witnesses could not be identified by the injured or the eye witness from the court.

9. Apart from all these, in the charge framed by the court, it is not stated what was the common object for which unlawful assembly was formed. Without a specific common object, no unlawful assembly can be formed. If any person commits any offence as a member of the unlawful assembly, he cannot be convicted unless the court is satisfied as to what was the common object of the unlawful assembly. If there is no common object, no unlawful assembly exists.

10. Therefore, the conviction entered against accused 1 and 2 under Sections 143, 147, 148 and 332 read with Section 149 of the IPC are not sustainable. The prosecution has failed to prove, by adducing satisfactory

evidence that petitioners were involved in the offence and an incident happened, as alleged by prosecution. Both the courts below failed to consider these vital aspects and committed an error in convicting the accused for various offences. The conviction and sentence passed against the revision petitioners are therefore, unsustainable. Hence, the following order is passed :

(i) The conviction and sentence passed against revision petitioners are set aside.

(ii) The revision petitioners are found not guilty and they are acquitted of offences under Sections 143, 147, 148 and 332 read with Section 149 of the Indian Penal Code.

(iii) They are set at liberty forthwith.

This revision petition is allowed.

K.HEMA, JUDGE.

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